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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 834

FRANK NICK ZIZZO, ALEXANDER STASNICK, HUGO A. LAZZARESCHI AND WALTER WOJCIECHOWSKI,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF TO GOVERNMENT'S BRIEF IN OPPOSITION.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioners herein make this their reply to the brief for the United States in opposition to the petition for certiorari to the United States Court of Appeals for the Seventh Circuit.

At page 4 of the brief in opposition at paragraph 2 the Government states that:

> "In May 1962, Wojciechowski informed an F.B.I. agent that his residence was in Chicago but that he used an Indiana address at the suggestion of his employer (R. 240). Stasnick also told an F.B.I. agent that he used an Indiana address while actually living in Calumet City (R. 238)."

These statements, of course, were not admissible against Zizzo. The trial court held that the Government had failed to prove the conspiracy alleged in Count 1 of the indictment. Consequently, if admissible at all, it was only admissible against the declarants. Mr. Duncan, Zizzo's accountant, prepared the returns, Government's Exhibits 1, 2, 3 and 4, as well as the Indiana returns and Zizzo merely signed them. Thus, at best, the proof against Zizzo is only a form of constructive knowledge in a case where specific intent is the gist of the crime.

Turning to the argument of the Government, the petitioners respectfully point to the proposition in the Government's brief that the privilege against self-incrimination only applies to information which is incriminating at the time it is furnished. The Government refuses to recognize that the information when furnished was *incriminating*. It was incriminating under Indiana law. In *Irvine* v. *California*, 347 U. S. 128, the state secured a conviction by the use of a registration statement compelled by the provisions of the Wagering Tax Act. By reason of *United States* v. *Kahriger*, 345 U. S. 22, and *Lewis* v. *United States*, 348 U. S. 419, this Court had placed the petitioners in the case at bar in a position where they could not avail themselves of the privilege against self-incrimination, in July of 1961. However, when the new law was passed, in September, 1961 proscribing interstate travel with intent to commit certain state offenses, this same compelled registration was the crucial link in the chain of proof of intent to commit the state offense, so necessary for a conviction in this case. Under this Court's recent holdings in *Malloy* v. *Hogan*, 378 U. S. 1, and *Murphy* v. *Waterfront Commission of New York Harbor*, 378 U. S. 52, reaffirming the Court's decision in *Boyd* v. *U. S.*, 116 U. S. 616, such compelled evidence can not be admissible in any proceedings.

Only one other point requires comment. It is based upon a statement in the Government's brief, page 6, lines 6 and 7, as follows:

> "Indeed Zizzo might have simply replaced his out-of-state employees with local assistants."

The petitioners respectfully submit to the Court that on appeal one of the principle contentions of the petitioners was that their short travel to and from their homes and families was innocuous, casual and had no impact on the bookmaking activities. Obviously it was a matter of no concern to Zizzo where his employees lived. The Government herein concedes the inconsequential effect of their living in Illinois and traveling to Indiana on the gambling activities. This is not a case where the spirit of the law has been violated. "It is not the words of the law but the internal sense of it that makes the law; the letter of the law is the body; the sense and reason of the law is the soul." Civil Rights Cases, 109 U. S. 3, 26.

CONCLUSION.

As Mr. Justice Jackson once observed in a dissenting opinion in *Lutwak* v. *United States,* 344 U. S. 604, 620:

> "Whenever a court has a case where behavior that obviously is sordid can be proved to be criminal only with great difficulty, the effort to bridge the gap is apt to produce bad law."

For the foregoing reasons it is respectfully submitted that this Court grant the petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

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